IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.1205 of 2004
With
Civil Application no.1618 of 2004

Sharad Chandrakant Thorat & ors. Appellants
Vs.
Sou. Kamal Nivrutti Ghadge & ors. Respondents

Mr.Sanjiv A. Sawant for appellants
Mr.N.R.Bubna for respondent no.1

CORAM: B.H.MARLAPALLE, J.

April 17, 2007.

P.C.

. Heard Mr.Sawant, the learned counsel for the appellants-original defendants. Admit.

. Mr.Bubna waives service for the respondent no.1 who is the contesting respondent being the original plaintiff. The respondent nos.2 to 4 are formal parties and so also the respondent no.5 is a formal party.

. The appeal is taken up for final hearing forthwith by consent of the parties.

. The respondent no.1, in Regular Civil Suit No.82 of 1997 had prayed for partition, possession and permanent injunction in respect of the suit

properties to the extent of her half share on the basis that she was the daughter of deceased Laxman, brother of Chandrakant. The defendant nos.1 and 2 are the sons of Chandrakant, defendant no.3 is the wife of Chandrakant whereas defendant nos.4, 5 and 6 are the sisters of Laxman and Chandrakant. The suit was opposed by defendant nos.1 to 3 by filing their Written Statement at Exhibit 26 and mainly on the ground that the plaintiff was not a natural daughter of Laxman. The trial Court on assessing the evidence i.e. the oral depositions of the plaintiff and PW 2 Manohar as well as the document at Exhibit 46, the school leaving certificate issued by the Head Master of Jejuri School No.2 run by the Pune Zilla Parishad held that the plaintiff failed to prove that Laxman was her father and consequently she was not entitled to the relief she had prayed for.

. However, the lower Appellate Court on reappreciating the evidence adduced before the trial Court held that the plaintiff proved that she was the daughter of deceased Laxman and, therefore, she was allowed to claim half share in the suit properties. Consequently the suit was decreed by the lower Appellate Court and it has been held that the

plaintiff is entitled for half share in the suit properties described in para 1A and 1B of the plaint.

. Manohar Mane, PW 2 is the husband of defendant no.6 - Hirabai Mane and defendant no.5 - Lilabai is also married to his brother Shankar. Thus he is the brother-in-law of deceased Laxman as well as Chandrakant. He has been examined at Exhibit 97. His evidence is relied upon by the lower Appellate Court along with the school leaving certificate at Exhibit 46 in support of its findings that the plaintiff is the daughter of deceased Laxman. However exhibit 46 being purportedly a public document issued by the Zilla Parishad School, it was necessary that the Head Master or any employee of the said school was examined before the trial Court or the lower Appellate Court along with supporting record like the school admission register of the year 1953 as well as the school leaving certificate of the year 1959. In the absence of a representative of the school appearing as a witness, it was not correct for the Appellate Court to accept the said document as the evidence to hold that the plaintiff's name before her marriage was Indumati and she was born to Laxman. The entries in the certificate at Exhibit 46 are

required to be proved from the school register maintained by the said Zilla Parishad School and this could be properly done by examining an employee of the said school. It could be Head Master or any senior teacher or clerk in the office of the school. Once this document at Exhibit 46 is proved, the depositions of PW 2 could be relied upon as a corroborative evidence.

. On this limited point the second appeal succeeds and the same is hereby allowed partly. The impugned decree passed by the lower appellate Court in Civil Appeal No.676 of 2002 is hereby set aside and the appeal is restored to the file of the 11th Ad-hoc Addl. District Judge at Pune. The lower Appellate Court will record further evidence in respect of Exhibit 46 and in the form as noted hereinabove. The plaintiff undertakes to examine either the Head Master or any other teacher or an employee like a clerk etc. of Jeevan Shikshan Vidya Mandir, School No.2 at Jejuri and the admission register of the said school will be placed before the lower Appellate Court through such witness. The recording of the evidence shall be concluded preferably by 30th June 2007 and the lower Appellate

Court will decide the appeal after the said evidence is recorded on its own merits and preferably by 31st August 2007.

. Parties to appear before the lower Appellate Court on 4th May 2007.

. R. & P. be returned to the lower Appellate Court forthwith.

. Writ to go forthwith.

. Civil application does not survive and the same stands disposed as such

(B.H.MARL